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C O N F I D E N T I A L SECTION 01 OF 02 KINSHASA 001870

SIPDIS

DEPT PASS TO USTR (WJACKSON)

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TAGS: [EFIN](#) [ECON](#) [PGOV](#) [KCOR](#) [KJUS](#) [CG](#)

SUBJECT: LARGEST CONGOLESE BANK CLAIMS GROSS INJUSTICE

Classified By: EconOff W. Brafman for reasons 1.4 b/d.

[11](#). (SBU) Summary. The DRC's largest and oldest bank has launched a lobbying campaign in opposition to a Supreme Court decision that upheld a USD 5.7 million judgment against it. The Commercial Bank of the Congo (BCDC) claims that the October 28 decision is a gross miscarriage of justice and yet another example of a corrupt justice system. The award arose out of a lawsuit that a Lebanese-owned company filed against BCDC in connection with a commercial transaction. A senior bank official said the BCDC may consider closing as a result of the case. End summary.

#### JUST THE FACTS

[12](#). (SBU) BCDC's Corporate Finance Advisor, Guy-Robert Lukama, met with Econ Counselor and EconOff November 1 to discuss a USD 5.7 million judgment entered against it. The litigation arose out of a 1987 World Bank (WB) funded economic development project with Sintimex, a company owned and operated by a Lebanese businessman with what the local media reports to be a long history of shady transactions in the DRC, resulting in a government order to expell him in [1995](#). BCDC extended to Sintimex and a sister company about USD 1.8 million in credit for the import of coffee processing equipment, at the request of SOFIDE, a now essentially defunct Congolese development parastatal. Sintimex alleged that it fully paid BCDC and that the bank then refused to turn over the documentation enabling it to recover the equipment. Looting in 1991 and 1993 resulted in the equipment's irreparable damage. Two appellate courts, including the Supreme Court, have upheld the trial court's judgment.

[13](#). (U) BCDC is the Congo's oldest and largest bank, claiming to hold forty percent of all national accounts, including deposits of nearly USD 55 million (several times that of Citigroup locally) and USD 80 million in credit extended. Fortis, a Belgium-based multinational, is the primary shareholder in BCDC's parent company, Belgolaise. BCDC has several branches throughout the country, and is in the process of reopening several offices, including one in Kolwezi, near the copper-cobalt concessions of American-owned Phelps Dodge and several other mining entities. (Comment: Although the banking sector remains extremely weak and currently acts as little more than a transfer agent, it has growth potential, particularly should an anticipated post-election investment boom occur. End comment.)

#### THE BANK'S POSITION

[14](#). (SBU) BCDC denies any malfeasance. Lukama told EconCouns that he does not believe Sintimex ever intended to process coffee, and that the entire endeavor was no more than a money-making scam. He said that Sintimex represented the coffee processing equipment as new, when in fact it was secondhand and overvalued.

[15](#). (C) Lukama said BCDC has no doubt corruption occurred at all three court levels. He points as an example to a court appearance before the Supreme Court President to discuss the case. The Judge said that he would consider the matter and rule on it, but several minutes later appeared with a typewritten judgment that Lukama believes the Court had already prepared after receiving a bribe. Lukama also said that Minister of Justice Kisimba Ngoy may have a personal axe to grind against BCDC, but he did not offer any details. (Comment: It is widely known that justice is often for sale in the DRC, so corruption in this specific case is certainly possible. Congolese lawsuits can often be little more than bidding contests to influence judges. End comment.)

[16](#). (SBU) Lukama said that BCDC has little hope of any further judicial recourse, its last possibility being an appeal based on claims of malfeasance by individual judges. Lukama told EconCouns that Vice President Azarias Ruberwa has the power to overturn the judgment on the grounds of malfeasance. (Comment: This in itself is an example of the lack of separation of powers under the Transitional Government. End comment.) Ruberwa has declined to do so, instead offering

only an oral assurance that the judgment will never be executed. Lukama also said that Parliament is discussing this matter but that the outcome is unlikely to be positive for BCDC.

17. (C) Since it sees no solution through legal channels, BCDC has begun lobbying other diplomatic missions, including the French, British, Belgians and the European Union (EU) for support, as well as President Kabila's staff. Lukama said that the EU responded that it will raise this issue within the framework of the CIAT/good governance discussions and that the French may suspend a mission of its Chambers of Commerce. (Comment: Post is not becoming directly involved in this matter at this stage, particularly as there are no direct American interests at stake. We believe it likely that the Belgian Embassy will act, given the Belgian financial interest involved. End comment.)

#### POSSIBLE RAMIFICATIONS

18. (SBU) Lukama said that the judgment could result in some serious consequences beyond the impact of paying the judgment. (He also explained that the WB is not a source for recovery because it had already discharged its obligation when it provided the original funding.) He said that the judgment's payment could ultimately result in BCDC's closure, as its primary international shareholder, Fortis, is in the process of divesting itself of its sub-Saharan banking business, and Belgolaise must now attract other investors. BCDC justifiably fears that this current problem would be a strong disincentive to potential investors. Short of closure, Lukama said that the judgment threatens to end or even reverse BCDC's current expansion. Lukama is also clearly concerned about the potential precedential effect of this judgment, as a solvent enterprise such as BCDC is an attractive target for the unscrupulous.

#### COMMENT

19. (C) Even if BCDC turns out to be crying wolf about the impact of the case on the bank's future, it is noteworthy that it is taking a stand against what it sees as a corrupt and broken justice system. In fact, this case may be the final straw for the Justice Minister because his reported overt interference in the case is creating a fairly strong reaction against him.

MEECE